

DOCKET NO: 244413US23



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
NATHANIEL KOLMES : EXAMINER: HURLEY, SHAUN R  
SERIAL NO: 10/693,971 :  
FILED: OCTOBER 28, 2003 : GROUP ART UNIT: 3765  
FOR: FIBERGLASS/WIRE PARALLEL :  
CORE :

REPLY BRIEF

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Examiner's Answer dated December 7, 2006, Appellant provides the following comments:

Appellant would like to thank Examiner Hurley for withdrawal of the rejection under 35 U.S.C. 112, first paragraph.

The Examiner has asserted that the patentability of Chakravarti is not that he uses acrylic, but rather where he uses acrylic. It is clear that Chakravarti requires antimicrobial treated acrylic fibers in his invention. In particular, at column 1, lines 31 et seq, Chakravarti states:

"In its broad aspects, the yarn is comprised of a acrylic fiber strand that contains an anti-microbial chemical and a strand of cut-resistant material and is of a total denier and diameter suitable to be knit on a commercial knitting machine."

Thus, the only specific fiber required by Chakravarti to be present is antimicrobial treated acrylic fiber. There is no teaching of any other type of fiber that could be used as the

anti-microbial fiber, and Chakravarti specifically relies on the acrylic fiber to provide certain properties to his final product. In particular, in the paragraph bridging columns 2 and 3, Chakravarti states:

“The use of acrylic fibers for knitting gloves result in a softer and more comfortable fitting glove. Furthermore, it has been found that gloves made from these yarn composites exhibit good durability and demonstrate improved gripping power over prior art gloves.”

Thus it is clear that Chakravarti requires acrylic fibers as a crucial part of his invention. The Examiner, on the other hand, has asserted that “[w]hile Chakravarti teaches the use of acrylic, he most certainly could have taught any of Applicant’s admitted alternatives, since all would provide antimicrobial properties while improving softness and hand.” On what part of Chakravarti is the Examiner basing this statement? There is nothing within Chakravarti to suggest any alternative to the acrylic fibers. Further, as can be clearly seen from the present claims, Appellant notes that the present invention is not required to be antimicrobial at all (although it can be in one of its many embodiments). The only antimicrobial fiber taught or suggested by Chakravarti is the treated acrylic fibers. Chakravarti uses those treated acrylic fibers for very specific reasons in his invention. There is no alternative to the acrylic fibers suggested by Chakravarti, and certainly no suggestion that any other type of fiber could be treated with an antimicrobial chemical and provide the benefits attributed by Chakravarti to the use of his acrylic fibers.

The Examiner’s statement that one could readily replace the acrylic fiber of Chakravarti with some other antimicrobial treated fiber is based purely on hindsight reconstruction of Appellant’s invention, as the only support the Examiner can provide to suggest such a substitution is Appellant’s own current application. In particular, as noted above, the Examiner states that Chakravarti “**could have taught any of Applicant’s admitted alternatives**”. These are alternatives based upon what disclosure? Based upon the

Applicant's disclosure, not Chakravarti. The Examiner cannot use Applicant's disclosure in such a manner in order to attempt to render Applicant's invention obvious. This is impermissible hindsight.

The Examiner must use the disclosure of the prior art to put together any assertion of obviousness. Chakravarti cannot provide that disclosure, since Chakravarti specifically requires the use of antimicrobial acrylic fibers and teaches no alternatives to such acrylic fibers. Further, Chakravarti uses these acrylic fibers not only to provide antimicrobial properties but to provide other benefits to his invention, as noted above. The Examiner's assertion that replacing those acrylic fibers with some other (unidentified and not suggested by Chakravarti) antimicrobial fiber is not a trivial matter and would remove one of two required components of Chakravarti's invention for which Chakravarti provides NO alternatives.

Appellant submits that the Examiner has thus not provided a *prima facie* case of obviousness and the rejection based upon Chakravarti must be REVERSED.

Respectfully submitted,

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